

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ARTHUR JOHNSON, JR.,

Petitioner,

Civil No. 04-CV-73777-DT

HONORABLE PATRICK J. DUGGAN

v.

WILLIE O. SMITH,

Respondent,

\_\_\_\_\_ /

**ORDER TRANSFERRING CASE TO THE COURT OF APPEALS**  
**PURSUANT TO 28 U.S.C. § 2244(b)(3)(A) AND 28 U.S.C. § 1631**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on August 4, 2005.

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

Petitioner Arthur Johnson, Jr. ("Petitioner"), a state prisoner currently incarcerated at the Oaks Correctional Facility in Eastlake, Michigan, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. In his *pro se* application, Petitioner claims the Michigan Department of Corrections has wrongly denied him disciplinary credits against his sentence for attempted breaking and entering and being an habitual offender, and has assigned him an incorrect security classification resulting in his continued confinement on this offense. Respondent has filed an answer to the petition for writ of habeas corpus claiming, in part, that the petition is time barred by the one year

statute of limitations contained in 28 U.S.C. § 2244(d). For the following reasons, the Court concludes that it must transfer this case to the United States Court of Appeals for the Sixth Circuit for Petitioner to obtain authorization to file a second or successive petition for habeas corpus relief.

In 1997, Petitioner filed a federal habeas petition in this court pursuant to 28 U.S.C. § 2254, which the Honorable Victoria A. Roberts denied without prejudice. *See Johnson v. Hofbauer*, Case No. 97-75929. In 2000, Petitioner filed three separate habeas petitions pursuant to Section 2254 which were assigned to the Honorable Paul D. Borman and consolidated. *See Johnson v. Tyskiewicz*, Case No. 00-73004; *Johnson v. Tyskiewicz*, Case No. 00-73177; *Johnson v. Curtis*, Case No. 00-74031. On February 28, 2001, Judge Borman denied the petitions with prejudice.

Section 2244(b)(3)(A) of the Antiterrorism and Effective Death Penalty Act of 1996 provides:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3)(A). The provisions of this section which govern the filing of successive petitions by state prisoners under Section 2254 apply equally to habeas petitions filed by a state prisoner under Section 2241. *See Long v. Commonwealth of Kentucky*, 80 Fed. Appx. 410, 414 (6th Cir. 2003); *Byrd v. Bagley*, 37 Fed. Appx. 94, 95 (6th Cir. 2002). The Sixth Circuit has directed district courts to transfer any second or

successive petition to the appellate court when the petition is filed without authorization from that court. *In Re Sims*, 111 F. 3d 45, 47 (6th Cir. 1997).

As set forth above, Petitioner previously filed habeas petitions in this court. Although Petitioner was not required to obtain a certificate of authorization following the dismissal of his first petition without prejudice, *see Harris v. Stovall*, 22 F. Supp. 2d 659, 664 (E.D. Mich. 1998), Petitioner's second, third, and fourth habeas petitions were adjudicated on the merits and dismissed with prejudice. Therefore, in order to file his present request for habeas relief, Petitioner first must seek a certificate of authorization from the Sixth Circuit. 28 U.S.C. § 2244(b)(3)(A). As Petitioner has not sought authorization from the Sixth Circuit, the Court will transfer his petition to that court. *In re Sims*, 111 F.3d at 47.

Accordingly,

**IT IS ORDERED**, that the Clerk of the Court shall transfer the petition for writ of habeas corpus filed in this case to the United States Court of Appeals for the Sixth Circuit.

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

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